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cuted, and the contract sued on was one in which he recognized and contracted with the corporation, so that the doctrine of estoppel was mainly the basis for the result.

DAMAGES.—BREACH OF COVENANT OF WARRANTY OF TITLE.—The Empire Land Company, a corporation, contracted to buy some land from the defendant, the presumed owner, at one dollar an acre, the vendor agreeing to convey to any purchasers from the vendee; the Land Company then contracted to sell part of the same land to the plaintiff for four dollars an acre. Acting on the first agreement defendant deeded directly to the plaintiff with full warranties of title. Later it was discovered that defendant did not convey a good title and the plaintiff sued defendant on the covenant of warranty. *Held*, the breach of such a covenant is measured by the consideration paid by the grantee and not by the amount received by the grantor. *Hunt v. Hay*, (N. Y. 1915) 108 N. E. 851.

Several fundamental considerations would seem to justify the conclusion of the court. In the first place, it could be based on the equitable maxim that of two innocent parties, he should suffer who has made the wrong possible. In the second place, the grantee paid the purchase price in consideration of the covenant given by the grantor, not for anything done or suffered by the third party. This is more apparent when we remember that such a covenant is a guaranty that the grantor will defend and protect the covenantee against all rightful claims presented. *Mitchell v. Warner*, 5 Conn. 497; *Bender v. Fromberger*, 4 Dall. (Pa.) 441. The logic and conclusion of the court in the principal case is supported by many cases. *McClure v. McClure*, 65 Ind. 482; *Bloom v. Wolfe*, 50 Ia. 286; *Barnett v. Hughey*, 54 Ark. 195; *Rash v. Jeune*, 26 Ore. 169; *Graham v. Leslie*, 4 Up. Can. C. P. R. 176; *Graves v. Mallingley*, 6 Bush. (Ky.) 361. There are several apparently conflicting authorities, notably, *Cook v. Curtis*, 68 Mich. 611, and *Staples v. Dean*, 114 Mass. 125. But a close examination removes this conflict, for in the last two cases the decision went off on the value of the land, admitting the point in controversy in the case above, that the covenantor had to pay.

DISCOVERY.—EXAMINATION OF DEFENDANT BEFORE TRIAL.—In an action for alienation of his wife's affections, plaintiff secured an order to examine defendant before trial who moved to vacate the same. *Held*, it not appearing that plaintiff honestly intended in good faith, to use his cause of action, he should not be given the right to examine before trial, for it would cast upon the defendant the burden of proving his defense before any case had been made against him. *Dryden v. Lattimer*, 151 N. Y. Supp. 121.

This case is the first one to arise in the state of New York involving the right in question when invoked in a suit for alienation of affections. It is fully in accord with previous decisions of the same court, however. An early case states the rule as follows: "Whenever it appears that the examination of the adverse party, before trial, is material and necessary, and that the application thereof is made in good faith, and not for the purpose of improperly extracting evidence from him, an order for examination will